IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7142 OF 2004

1. Dattatraya Govind Bhosale and Anr. .. Petitioners.

Vs

1. Shri Anna Govind Bhosale and ors. .. Respondents

Mr. P.D.Dalvi, for the petitioners.

CORAM : D.B.BHOSALE,J.

DATE : 6th September, 2004.

PC

1. Heard Mr.Dalvi, learned counsel for the petitioners.

2. Mr Dalvi, learned counsel for the petitioners-plaintiffs, submits that the dispute in the instant petition pertains only to Gat No.1137, admeasuring 69 Ares, situate at Kodoli, Taluka Panhala. The respondents-defendants claim this property on the basis of the Will that was executed by Mahadeo on 13.1.1997 by which it was bequeathed to defendant no.2. On the other hand, it is the petitioners case that they have 1/3rd share in the said property, i.e. Gat No.1137 and, therefore, they sought injunction against the respondents restraining them from obstructing their possession and alienating the suit property to third person. Mr Dalvi, learned counsel for the petitioners, submits that there was no partition in so far as Gat no.1137 is concerned and, therefore, they have right to enjoy the said property. If that be so, in my opinion, the petitioners cannot claim injunction against the respondents inasmuch as they have equal right to enjoy the said property. The apprehension expressed by the petitioners that if third party rights are created by the respondents, their possession in the suit property is likely to be obstructed by the purchasers, and therefore he pressed the prayer for

injunction restraining them from alienating the suit property to third person. In my opinion, even if the respondents create third party rights in Gat no.1137 and if the petitioners have share in the said property as they claim, they have remedy against the third party if their possession is disturbed. Keeping this in view and considering the overall facts and circumstances of the case, no interference is called for in this petition. This petition,therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)